

A funeral director is engaged in the business of selling tangible personal property to purchasers for use or consumption when he sells such items of tangible personal property as caskets, grave vaults, grave clothing and flowers to purchasers for use or consumption, and he is required to remit Retailers' Occupation Tax to the Department on his gross receipts from such sales. 86 Ill. Adm. Code 130.2130 (This is a GIL.)

August 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated May 29, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

We are presently in the process of examining our corporate compliance with Sales and Use Tax legislation in the States in which we do business. Our preliminary evaluation indicates that we are not required to register for the purposes of the taxes your office administers, and that our previous registration was due to misunderstanding on my predecessor's part when we commenced operations in Illinois in early 2002.

We operate in Illinois. We are a seller of prearranged funeral (cremation only) services, and also provide cremation services on an at need basis. We sell approximately 60 pre need contracts per month, and contract with third party crematoriums for approximately 5 cremations per month.

We presently charge \$1,399 for a fully paid pre need contract. Of this amount, \$674 is subject to State trusting requirements and \$725 is retained by us to cover selling costs and commissions, administrative set up costs for the maintenance of the contract, merchandise, and profit. The tangible personnel property involved comprises an urn, plaque, information and registration portfolios, also included is a cardboard container consumed in the cremation process. The cost to us for the tangible personnel property is approximately \$50.

For at need cremation services (e: where no prearrangements have been made) we charge \$2114 for the same services. The cost to us for the tangible personnel property included under the at need service would be the same approximate amount of \$50.

Our interpretation is that we are neither retailers, nor servicepersons requiring registration in Illinois.

Kindly advise if our interpretation is not correct. Would you also advise us to your position on refunding the \$24,231 we have remitted since we commenced operations.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2130 regarding undertakers and funeral directors. This regulation states, in part, as follows:

“A funeral director is engaged in the business of selling tangible personal property to purchasers for use or consumption when he sells such items of tangible personal property as caskets, grave vaults, grave clothing and flowers to purchasers for use or consumption, and he is required to remit Retailers' Occupation Tax to the Department on his gross receipts from such sales. This is true even though he makes such sales as a part of a funeral.”

The Department's regulation, 86 Ill. Adm. Code 130.201, defines the term “Sale at Retail” as follows:

“Sale at retail” means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subject to a use for which it was purchased, for a valuable consideration, provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.

As you may note from this regulation, a sale at retail only occurs when there is a transfer of tangible personal property. When the tangible personal property is transferred, a sale occurs. There are no minimal amounts not subject to tax. Any transfer of tangible personal property no matter how minimal in cost is subject to tax in Illinois.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with

Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.